CF0000064161

(2)

Division Bench (Final)

समक्ष माननीय मध्यप्रदेश उच्च न्यायालय, जबलपुर

क्रिमिनल अपीलन. 1151/2000

अपील अन्तर्गत धारा 374 (2) दण्ड प्रक्रिया संहिता

मंगल सिंह पिता चेतन कश्यप ,
उम्र 30 वर्ष, साकिन ग्राम-ईरोकपाल,
थाना- जगदलपुर,
जिला- बस्तर. ------ अपीलार्थी

जेल में है

विरूद्ध

मध्य प्रदेश शासन,
द्वारा आरक्षी केन्द्र
जगदलपुर, जिला- बस्तर (म0प्र0) ----- प्रत्यर्थी

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Filed on 27/11/2000
by Shri K.L. Ajmani Advocate

XI-HC-22

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

9-1-2006

Miss Sharmila Singhai, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment.

By this appeal under Section 374 (2) of the Cr.P.C., the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 2-3-2000 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No.262/94, whereby learned Additional Sessions Judge after convicting the accused/appellant for commission of offence under Sections 302 & 307 of the I.P.C. sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year and to undergo R.I. for ten years and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year, respectively. It was further directed that both the sentences shall run concurrently.

The prosecution case, in brief, necessary for the disposal of this appeal is that Pursati (PW-1) lodged a report Ex.P-1 at Police Station: Jagdalpur on 16-3-1994 to the effect that on 16-3-1994 at about 6 p.m. his nephew Mangal Singh came to him and demanded money, in the first instance he refused to give money, on which Mangal Singh became angry and again asked for money, on this he gave three rupees, thereafter, Mangal Singh along with Laxminath went towards the house of Sadhuram. At about 8 p.m. Mangal Singh again came to him carrying 'Kadra' (an iron instrument

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like spade) in his hand and said that "today I will kill you" and assaulted with the sharp edged Kadra on his left shoulder as a result of which he received injury, again he made second attempt on his neck, but he saved himself from the assault and raised cries, hearing the cries, his wife and brother Chaitu also came and intervened, and Mangal Singh ran away carrying Kadra. On the way, he also assaulted Mangal Ram with the same Kadra as a result of which Mangal Ram received injury on the hand and back. He threw the Kadra near the house of Sadhuram. Thereafter, Sitaram & Devi Singh came and informed that Mangal Singh has murdered Laxminath.

Receiving this report, the Sub Inspector registered F.I.R.No.129/94 for the commission of offence under Sections 302, 307 & 323 of the I.P.C. and left for the scene of occurrence. After giving notice Ex.P-2 to the Panchas, he prepared the Panchnama of the body of Laxminath Ex.P-3. Kadra, the weapon of offence was taken into possession under Ex.P-4. Site plan Ex.P-6 was prepared by Investigation Officer S.N. Shukla. The accused was arrested and examined by Dr. S.R. Tandon (PW-8), who prepared the injury report Ex.P-11. The weapon of offence, Kadra was sent for examination by the doctor under Ex.P-9 and the same was examined by the doctor. The body of Laxminath was sent for post-mortem examination. Post-mortem was conducted by Dr. S.R. Tandon, Assistant Surgeon of Maharani Hospital, Jagdalpur, who prepared the post-mortem report Ex.P-12. Injuries of Mangal Ram & Pursati were also examined by the doctor and the doctor prepared reports Exs.P-16 & P-17.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from

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where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove charge against the accused/ appellant examined nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Miss Sharmila Singhai, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

The fact of homicidal nature of death of Laxminath has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of Dr. S.R. Tandon (PW-8) it is established that the death of Laxminath was homicidal in nature.

As far as the question of involvement of the accused/appellant in committing the crime under Section 307 of the I.P.C. by attacking Pursati is concerned, Pursati (PW-1) has stated in his evidence that on the fateful day when he was sitting in his shop, the accused came to his shop by concealing Kadra behind his body, when he enquired from accused Mangal Singh as to what he has concealed behind his body, he replied that "I will kill you", and attacked with the Kadra on his neck which hit on his left shoulder, he fell down. Hearing his cries, his wife Somari came, the father of the accused Chetu also reached on the scene. Chetu tried to catch the accused and he

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was able to catch him by his baniyan, however, the accused ran way and a piece of baniyan came in the hand of the father of the accused. The above evidence of PW-1 Pursati has been corroborated by Somari (PW-2), wife of Pursati. Injuries of Pursati were examined by Dr. M.P. Tiwari, who prepared the injury report Ex.P-16 and he has been examined as PW-9. He has stated in his evidence that on 17-3-1994 injuries of Pursati were examined by him. He saw that there was a lacerated wound in the length of ¼ cms. on the left shoulder, a lacerated wound in the length of 1" on the neck, blood was oozing out of both the injuries, and both the injuries were caused by a hard and blunt object. His injury report is Ex.P-16.

In order to ascertain the fact whether the prosecution has been able to establish from the evidence that accused Mangal Singh attacked Pursati with the intention to cause his death, the evidence of Pursati (PW-1) is scrutinized by us. In cross-examination, para 8, he has stated that when the accused came to him, he enquired as to what he has concealed behind his body, he become alert and jumped over the accused as a result of which both of them fell down on the ground and on account of that he received injury on the neck, thereafter, when he caught the accused he received injury on the shoulder. Only once the quarrel took place between him and the accused. In view of the evidence of this injured witness, also looking to the evidence of Dr. M.P. Tiwari (PW-9) in which he has stated that injuries were caused by blunt and hard object, and as per the injury report, injuries were simple in nature, it cannot be held that the accused attacked Pursati (PW-1) with the sharp edged portion of Kadra with the intention to cause his death. As has been mentioned above that this witness himself became cautious and jumped over the accused, both the persons fell down on the ground, in that process he received injuries and the injuries were simple in nature, therefore,

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there is no prosecution evidence on record which shows that the accused attacked Pursati with the sharp edged Kadra in order to commit his murder. The injuries were caused by the blunt and hard object. In the circumstances, offence under Section 307 of the I.P.C. was not made out against the accused/appellant and only offence under Section 323 of the I.P.C. was made out. Hence, conviction under Section 307 of the I.P.C. cannot be sustained, and the same is liable to be set aside, instead thereof, the accused is liable to be convicted under Section 323 of the I.P.C. and sentenced to R.I. for one year for that offence.

Now, coming to the involvement of the accused in the commission of murder of Laxminath, Miss Sharmila Singhai, learned counsel for the accused/appellant argued that there is no eyewitness in this case and the evidence of Sadhuram (PW-6) is that he saw the accused and the deceased together, beyond that there is no evidence, therefore, the accused is entitled for acquittal against the commission of offence under Section 302 of the I.P.C.

On the other hand, Mr. U.N.S. Deo, learned Additional Public Prosecutor supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the judgment and evidence on record. It is true that there is no direct or ocular evidence regarding the involvement of the accused in committing the murder of Laxminath. The whole case rests on the circumstantial evidence. In order to convict the accused based on the circumstantial evidence, as per the settled principles of law laid down by the Hon'ble Apex Court in the matter of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 Supreme Court 2416**, in a case based on circumstantial evidence, before the Court can

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record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

Now, we shall proceed to examine the prosecution evidence as to whether based on the above settled principle, the prosecution has been able to establish the involvement of the accused/appellant in the crime in question i.e. the murder of Laxminath. The prosecution evidence to connect the accused with the murder of Laxminath relates to following circumstances: -

1. that, Laxminath was seen alive in the company of the accused just before his death while going towards the house of Laxminath;
2. that, the accused at the same time went with the weapon of offence, Kadra, to the house of Pursati and assaulted him with the same Kadra. The accused ran away and also assaulted Mangal Ram with the same Kadra and thereafter, he ran way throwing the Kadra;
3. that, Dr. S.R. Tandon (PW-8) has opined that the injuries which were found on the body of Laxminath might be caused by the Kadra in question which the accused was carrying; and
4. that, the body of the deceased was found on the way where deceased Laxminath was seen alive in the company of the accused.

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In order to prove the first circumstance, the prosecution has examined Sadhuram (PW-6), who has stated in his evidence that on the fateful evening at about 7 p.m. he saw deceased Laxminath in the company of accused Mangal Singh going towards the house of Laxminath, Laxminath was ahead of Mangal Singh and Mangal Singh was following Laxminath. Thereafter, he went to the shop and residence of Pursati, heard the cries and saw that accused Mangal Singh was assaulting Pursati as a result of which Pursati received injury on the neck, thereafter, father of the accused Chetu came and intervened. At that time, his son Mangal Ram came out of the house and the accused assaulted his son with the Kadra, blood started oozing out of the injury. Thereafter, he saw that Laxminath was lying dead near the house of Cheti Bai and there was injury on his neck. In cross-examination, this witness has stated that after one hour, he came to know that Laxminath has been murdered and the villagers informed him that the body of Laxminath is lying on the road. The accused assaulted his son Mangal Ram and he had no enmity against the accused. Therefore, as per the evidence of this witness, he saw deceased Laxminath alive in the company of the accused just one hour before he saw the dead body of Laxminath on the way where they were going together. As per the settled law laid down by the Apex Court in the matters of **Bodhraj alias Bodha and others v. State of Jammu and Kashmir** reported in **(2002) 8 SCC 45** & **Subhash Chand vs. State of Rajasthan** reported in **(2002) 1 SCC 702**, in order to connect the accused with the murder the time gap between the death and last seen must be so proximate that there should not be any possibility of coming any third person in between and the last seen together coupled with other circumstances must point towards the involvement of the accused in the crime.

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As far as the second circumstance is concerned, as has been discussed in the earlier part of the judgment and as per the evidence of Pursati (PW-1), the accused went to the residential shop of Pursati and on enquiry by Pursati that what he is concealing behind his body the accused replied that he will kill him today on which scuffle took place between the two and Pursati received injuries caused by Kadra which the accused was carrying. The evidence of this witness PW-1 has been corroborated by Somari (PW-2), wife of Pursati, and further it has been corroborated by the medical evidence of Dr. M.P. Tiwari (PW-9). Therefore, at the time of crime in question, the accused was carrying Kadra and with the same Kadra he assaulted Pursati.

As far as the third circumstance is concerned, Dr. S.R. Tandon (PW-8) in para 12 of his evidence has stated that he examined the Kadra in question and the injuries which were found on the body of the deceased could have been caused with the Kadra, the weapon in question.

As far as the fourth circumstance is concerned, Sadhuram (PW-6) has stated in his evidence that he saw that the body of Laxminath was lying near the house of Cheti Bai and injuries were present on his neck. As per the site plan Ex.P-6, dead body of Laxminath was found near Cheti Bai's house, which is the same way on which the accused and the deceased were going towards the house of the deceased. Perusal of the site plan Ex.P-6 shows that the dead body of Laxminath was lying at point No.2 near Cheti Bai's house, on the road on which deceased Laxminath and accused Mangal Singh were seen going together.

Therefore, in view of the above discussion, it is established that deceased Laxminath was seen alive in the company of the accused

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approximately one hour before the incident and the injuries which were found on the body of the deceased could be caused by the weapon in question Kadra which was thrown away by the accused and was taken into possession. The accused carrying the same Kadra went to the house of Pursati (PW-1) where he attacked Pursati with the same Kadra, thereafter when the father of the accused intervened he ran away and on the way he assaulted Mangal Ram with the same Kadra which was witnessed by Sadhuram (PW-6). Hence, involvement of the accused in the crime in question is established by the fact that deceased Laxminath was seen alive in the company of the accused just before the death, immediately thereafter, the accused attacked Pursati & Mangal Ram with the same Kadra which he was carrying. Therefore, chain of circumstance is complete which points towards the fact that the accused was the author of crime i.e. murder of Laxminath.

From the evidence of prosecution, it is established that there is no possibility of involvement of any third person in the crime in question. In view of the foregoing discussion, we are of the opinion that there is no illegality and infirmity in the judgment of the trial Court in convicting the accused for committing the murder of Laxminath by the accused, and the same is based on legal clinching evidence.

In the result, the appeal of the accused/appellant, as far as the offence under Section 302 of the I.P.C. and substantive sentence awarded under that Section is concerned, is dismissed, however, the fine amount is reduced to Rs.100/- from Rs.5,000/- and in case of default of payment of fine, the accused shall further undergo R.I. for one month. The appeal as against conviction under Section 307 of the I.P.C. is allowed. The conviction and

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आदेश पत्रक (पूर्वानुबद्ध)

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	sentence awarded under Section 307 of the I.P.C. are set aside, instead thereof, the accused is convicted under Section 323 of the I.P.C. for inflicting injuries on the body of Pursati and he is directed to undergo R.I. for one year. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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